



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY)**

**Case reference** : **LON/00BG/LSC/2015/0038**

**Property** : **54 Gosling House, Sutton Street,  
London E1 0AX**

**Applicant** : **The London Borough of Tower  
Hamlets (Landlord)**

**Representative** : **Mrs Isi Akhigbe, Solicitor with  
Tower Hamlets**

**Respondent** : **Mr Shamuel Miah (Tenant)**

**Representative** : **In person**

**Type of application** : **For the determination of the  
reasonableness of and the liability  
to pay service charges and/or  
administration charges**

**Tribunal members** : **Miss A Seifert FCI Arb  
Mr M Cairns MCIEH  
Mrs L Hart**

**Venue** : **10 Alfred Place, London WC1E 7LR**

**Date of decision** : **1<sup>st</sup> December 2015**

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**DECISION**

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### **Decisions of the tribunal**

- (1) The tribunal determines the amount payable by Mr Miah to the applicant in respect of arrears of service / administration charges claimed in the County Court proceedings to be **£6990.85** (not including county court interest, costs and fees).
- (2) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to Mr Miah through the service charge.
- (3) This matter should now be referred back to the County Court for determination of the outstanding issues.

### **The application**

1. The applicant, the London Borough of Tower Hamlets ("the Council"), seeks (and following a transfer from the County Court the tribunal is required to make) a determination under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to whether service charges are payable and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to whether administration charges are payable by the respondent, Mr Miah.
2. The tenant seeks an order for limitation of the landlord's costs in the proceedings under s. 20C of the 1985 Act.
3. Proceedings were originally issued in the County Court under claim no. A54YM696.
4. In the Claim Form in the County Court dated 20<sup>th</sup> June 2014, the respondent claimed £7,280.40 together with interest, fees and costs. Particulars Of the 'Debt' and 'Interest' were set out in a schedule attached to the Particulars of Claim. The service charge years in issue in the County Court proceedings commenced with estimated service charges 2003/2004 and concluded with estimated service charges 2013 /2014. The total amount claimed for arrears was £7,280.40.
5. A form of 'Admission (specified amount)' dated 11<sup>th</sup> July 2014 indicated that the amount of £3254 of the claim was admitted.
6. The claim was transferred to this tribunal, by order of District Judge Rand sitting at the County Court at Clerkenwell & Shoreditch by an order dated 20<sup>th</sup> January 2015.

7. Directions were issued by the tribunal dated 17<sup>th</sup> February 2015 following a Case Management Conference, attended by Mrs Isi Akhigbe, Solicitor, on behalf of the applicant and by Mr Miah. Although it was noted that the issues were not clear these appeared to concern the payability and reasonableness of service charges and charges demanded from 2003, in particular:
  - The charges made in connection with insurance premiums particularly when the respondent has had had difficulties making a claim
  - The general level of administrative charges as the respondent argues that Tower Hamlets Homes are making excess profits out of leaseholders
  - The general level of services provided by Tower Hamlets
  - Whether an order under s. 20C of the 1985 Act should be made.

In the parties' Statements of Case the areas of concern were more clearly identified and were addressed by both parties under the headings: The Housing Revenue Account, The Administration / Leasehold Management Charge, Housing Management Charge, various block and Estate Charges, and complaints of repairs issues at the property.

8. The relevant legal provisions are set out in the Appendix to this decision.

### **The Hearing**

9. Mr Miah appeared in person at the hearing. He was accompanied by his support workers for part of the hearing. The respondent was represented by Mrs Isi Akhigbe, Solicitor with the Council.
10. Mr Miah applied by email on 21<sup>st</sup> August 2015 for an adjournment of the hearing listed for 27<sup>th</sup> August 2015. He contended that he was hoping that a legal representative from the Bar Pro Bono unit would be available for the hearing but due to the summer holiday, most were away. A previous hearing had been adjourned. Mr Miah requested that the hearing listed for 27<sup>th</sup> August 2015 also be adjourned so that he could obtain representation.
11. By an email dated 24<sup>th</sup> August 2015, Tower Hamlets Homes ("THH") on behalf of the respondent opposed the application for an adjournment or postponement. It was submitted that Mr Miah originally issued proceedings in the County Court on 26<sup>th</sup> June 2014 and the case was transferred to the tribunal on 20<sup>th</sup> January 2015. At the case

management conference on 17<sup>th</sup> February 2015 it was decided that the case would be heard on 1<sup>st</sup> June 2015. As a result of Mr Miah's previous request for an adjournment the tribunal issued amended directions dated 8<sup>th</sup> May 2015, in which the hearing of the substantive issue was re-listed. On 16<sup>th</sup> July 2015 Mr Miah requested a further postponement relying on the availability of a support worker to assist him. In directions dated 20<sup>th</sup> July 2015 the tribunal granted a postponement and the matter was re-listed for a hearing on 27<sup>th</sup> August 2015. Mr Miah had had ample opportunity to arrange representation.

12. Mr Miah had sought the assistance of the Bar Pro Bono Unit. However, there would first have to be an assessment of the merits of the case. The Bar Pro Bono Unit were only offering to review the case, not offering representation. There was no indication in the correspondence that such assistance would be available, and if available, when this might be.
13. It was noted that Mr Miah had previously been advised by a firm of Solicitors regarding his case in October 2014 and a legal advice centre in July 2015. Letters were provided by 'Support, Advice & Recovery Service (Mental Health)' dated 3<sup>rd</sup> August 2015 in which it was stated that Mr Miah was being provided with practical and emotional support by the Community Options Team. Mr Siddique, who wrote the letter, described Mr Miah's health issues. Mr Eyimole, a mental health support worker at 'Mind' wrote a letter dated 26<sup>th</sup> August 2015 outlining the mental and physical health issues. Mr Miah's support workers attended and stayed during part of the hearing.
14. Mr Miah had provided a defence in the County Court proceedings, and a detailed witness statement, a 'Respondent's Statement of Defence and a Counterclaim' dated 27<sup>th</sup> April 2015 in the tribunal proceedings and a respondents 'statement of case' of the same date. Also, Mr Miah had provided a detailed witness statement dated 20<sup>th</sup> May 2015.
15. Despite the absence of professional representation, Mr Miah had been able to provide detailed written submissions and representations supporting his case. Solicitors and legal representatives had previously been involved in advising Mr Miah. The hearing date had previously been postponed and the current hearing date had been known to both parties for a substantial period of time. Prior to the hearing the tribunal refused that application for an adjournment on the basis that the case was issued in the County Court in 2014; Mr Miah has had sufficient time to organise representation and the landlord is entitled to have its case heard; and the application was opposed by the applicant.
16. Having considered the application and representations, and taking into account that there had been previous adjournments, the hearing date had been known for several months, and that there was no clear indication that representation would be available to Mr Miah in this case by the Bar Pro Bono unit, in all the circumstances the tribunal

considered that it would be in the interests of justice and in accordance with the overriding objective that the hearing proceed.

### **The background, evidence and submissions**

17. The property, 54 Gosling House (“the property”), the subject of this application, is a one bedroom, ground floor flat, in Gosling House (“the block”) which comprises 31 flats of which 8 are let on long leases. The block is located in the Martineau Estate (“the Estate”), which comprises 7 other blocks. A plan showing the Estate was provided. The Estate includes footpaths, roads, car parks, grassed areas, hard area, games court and playground.
18. Neither party requested an inspection and the tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.
19. Flat 54 is let under a lease for 125 years from 30 January 1989. Mr Miah holds a long lease of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.
20. By clause 4(4) of the lease the tenant covenanted to pay the Interim Service Charge and the Service Charge (“the Annual Service Charges”) at the times and in the manner provided in the Fifth Schedule to the lease, both such charges to be recoverable in default as rent in arrear.
21. Under clause 5(5) the landlord covenanted:
  - (j)(i) *To employ its servants or at the Lessors discretion a firm of Managing Agents to manage the Building and discharge all proper fees salaries charges and expenses payable to such agents or such other person who may be managing the Building including the cost of computing and collecting the rents in respect of the Building or any parts thereof...*
  - (o) *Without Prejudice to the foregoing to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the Lessors may be considered necessary or advisable for the proper management maintenance safety amenity or administration of the Building.”*
22. The Fifth Schedule provides as follows:
  - i By paragraph 3 that the Interim Charge shall be paid to the landlord by 4 equal payments in advance on the 1<sup>st</sup> day of April,

the 1<sup>st</sup> day of July, the 1<sup>st</sup> day of October and the 1<sup>st</sup> day of January in each year.

- ii By paragraph 5 that if the Service Charge in respect of any Accounting Period exceeds the Interim Charge paid by the tenant in respect of that Accounting Period together with any surplus from previous years carried forward, then the tenant shall pay the excess to the Landlord within 28 days of service on the tenant of the Certificate.
23. By clause 5(5) of the lease, the landlord covenanted subject to and conditional upon payment being made by the tenant of the Interim amongst other things to maintain and keep in good and substantial repair and condition the main structure of the block as well as the Common Parts and to insure and keep the block insured.
24. The Council provided as part of their case, service charge statements for the years 2003/04 to 2013/14 inclusive (Appendix B to the applicant's statement of case).
25. Mr Gabriel Brown of THH Leasehold Services provided a witness statement dated 8<sup>th</sup> June 2015. Mr Brown works as a Leasehold Services Manager, within the Leasehold Services Team of THH. His duties consist of managing the Service Charge Advice and Major Works Consultation teams. He has been a Leasehold Service Manager within THH since October 2014. Prior to this he was the Leasehold Services Team leader for the Service Charge Advice Team, the team tasked with dealing with resolving queries and disputes from leaseholders on service charge matters. He explained that THH is an arm's length management company set up to manage the Council's housing stock. THH manages approximately 9000 leasehold properties for the Council, which are divided into three patches. In Mr Brown's previous role he managed the leasehold officers for the area in which the Estate is situated. He submitted that all of the charges were reasonable, reasonably incurred and payable by Mr Miah to the Council.
26. Mr Miah commented on Mr Brown's evidence in his 'Statement of Defence and Counterclaim', Statement of Case and Witness Statement. In his Statement of Case dated 27<sup>th</sup> April 2015, Mr Miah referred on the provisions of s.27A of the 1985 Act. He said that the charges were not reasonable generally. These included administration charges which he submitted were unreasonable and allowed the Council to make 'excessive profits out of long leaseholders and/or fund services that are really council services provided to all the inhabitants of Tower Hamlets'. He further submitted that there was a failure to implement any proper and/or sufficient procedure for assessing, charging, controlling and/or apportioning costs amongst leaseholders including obtaining of competitive tenders / estimates.

In respect of services / works carried out, Mr Miah submitted that these were often of an unreasonably bad standard. These included charges made for services in connection with insurance premiums and services which he claimed had that resulted in his being forced to leave the property after it was flooded.

27. The tribunal's schedule

27.1 In accordance with the tribunal's directions, the Council had completed a schedule setting out the various service charge items for each year with amounts charged. Mr Miah was requested in the directions to fill out the column in the schedule to show his comments. Mr Miah provided no specific comments challenging the amounts save 'Dispute 03 to 06 £400 Dispute Accepted' and '50% 06-14'

27.2 The tribunal does not consider that it has been shown that the service charge costs were compromised or agreed for the period 2003 to 2006.

27.3 In respect of the alleged compromise Mr Miah contended £400 of the sums in issue had been written off by the Council and/or that some sums had been paid direct to THH by the Department of Work and Pensions. Mr Brown disputed this submitted that there was no evidence for such agreement. Any agreement or payment by or on behalf of Mr Miah would be recorded on the system. There was no such record. Further, he explained that if a leaseholder has been overcharged, a credit adjustment is made resulting in a refund to that leaseholder / all leaseholders in that block. If this occurred it would have been recorded in the leasehold statements and the leaseholders affected are usually written to. There was no satisfactory evidence to support Mr Miah's contentions.

27.4 The tribunal considered that there was no satisfactory reason provided to support Mr Miah's suggestion on the schedule that there be a global 50% reduction in all costs.

28. The Council's explanations of how the various elements of the service charge are calculated.

In the statement of case and in Mr Brown's evidence, the Council provided an explanation of how the various elements of the service charge are calculated.

28.1 Housing Revenue Account

In his evidence at the hearing, Mr Miah questioned why the charges for the Revenue Account had increased, as no additional services had been identified.

Mr Brown provided a background explanation of the Housing Revenue Account. The Local Government Housing Act 1989 as amended requires local authorities to establish a Housing Revenue Account ('HRA') into which rents and service charges are paid, and from which expenditure on managing and maintaining housing stock is taken. The HRA is required to be 'ring-fenced' so that a local authority is not permitted to transfer income and expenditure between the HRA and its general fund, other than in very specific circumstances. The Council's housing stock is therefore intended to be self funding. The only sources of revenue that the HRA has are rents and service charges. If the true cost of managing the leasehold stock is not met by leaseholders, it has to be subsidized by increased rents charged to secure tenants. The Council has an overall housing stock of approximately 22,500 units consisting of flats and houses. Of these approximately 9000 are let on long leases following the exercise of the Right to Buy. In 2008 the Council established THH as an Arm's Length Management Organisation to manage its housing stock. Up until that time many of the costs charged to the leaseholders did not reflect the true cost of providing services and were in effect, subsidised by the Council's secure tenants. The Council provides services by THH pursuant to various Service Level Agreements. Under these THH is required to fulfil the Council's obligations. These services comprise about ten elements which are: Leasehold Management, Estate and Block Cleaning, Estate and Block Repairs, Bulk Waste, Bin Hire, Horticulture and TV Aerial Repairs. He referred to excerpts from the Audit Commission report of 2010 which led the Council to seek to maximise the recharge and collection of service charges.

## 28.2 Direct Management

The Council splits each front line service cost between Direct Cost (staff and materials), Direct Management Cost (salaries of managers directly managing that service) and Overheads (premises, back office staff, IT and telephone etc.). Taking caretaking as an example, 'Block Caretaking Management' is made up of the salaries for staff that manage the caretaking service, primarily the Caretaker Team Leaders, but also the caretaking management hierarchy above them i.e. the two Caretaking Managers and a proportion of the Head of Environmental Services. Prior to 2011/2012, the salary costs for the services which Mr Miah purported to be failed / poorly managed services (like fly tipping, response services and leasehold account management services) were not being fully recovered from the leaseholders. A credit was applied to the service charges in 2011/12 to dampen the increase that would otherwise have occurred when the Council altered its methodology to include all costs towards which leaseholders should contribute. It was set to give an average reduction of £100 in 2011/12, £75 in 2012/13, £50 in 2013/14 and £25 in 2014/2015. The Council has done this and so far has managed to make sufficient savings over this period to keep the service charges from increasing as the discount was withdrawn.



### 28.3. The Administration / Leasehold Management Charge

It was explained that the Council makes a charge for Administration and that this was renamed Leasehold Management from 2010/11 onwards. This relates to costs for leaseholder account management services provided only for leaseholders and freeholders with a service charge account, and not for all residents. This includes the calculation, billing and recovery of service charges, information provision and handling of queries, together with a small amount of consultation where it is required for items charged in the annual accounts. It also included a proportion of the SLA costs for the Cashiers Services (for processing cash and cheque payments of service charges. The Leasehold Management Charge should not be confused with the Housing Management Charge. The Leasehold Management Charge covered work carried out specifically for leaseholders such as service charge billing and recovery, whilst the Housing Management Charge covers services rendered to all residents such as anti-social behaviour management and pest control. The latter charge is apportioned to Leaseholders based on the number of hours dedicated to leaseholder services.

In his Statement of Case dated 27<sup>th</sup> April 2015, Mr Miah submitted that an administration charge is only payable to the extent that the amount of the charge is reasonable. He submitted that the Council's administration charges were unreasonably high. In respect of the charges related to services provided to him in connection with flooding of flat 54 in 2012, he claimed that flooding was caused by poor maintenance, the Council failed to repair the damage and/or deal efficiently or to a reasonable standard with insurance issues arising under the building insurance policy. He claimed that as a result of poor service by the Council that he had had to live in a hotel and with friends, the time taken was unreasonably long and the service unreasonably bad. He submitted that in the circumstances he should not be liable to pay 'these administration charges'.

Mr Brown referred to the Leasehold Management Charge for 2012/13. A reduced figure of £1,805,854.22 was the result of a subsidy. Each leaseholder was then charged an equal share of that amount, which worked out as £200.76. It was stated that the Council does not make a profit from either the charges to leaseholders or from the fund which covers services to Council properties. He referred to Independent House Mark benchmarking for 2012/13 which indicates that the Council's leasehold services costs are substantially cheaper than average. A copy of the Benchmarking report of November 2013 was provided. Following a flood into Mr Miah's property in 2012 he made a claim through the building insurance and was rehoused by the insurers. Mr Miah had expressed dissatisfaction as to the manner in which the insurers dealt with him. He informed Leasehold Management Services and they informed the Council's insurance team who manages queries relating to insurance claims. The Council had assisted Mr Miah with his

complaints by helping him with photocopying over 100 pages of documents he needed to make his complaint to the Council's Building Insurance team, without charge. In October 2012 Mr Brown was informed that the complaint had been escalated to the Financial Ombudsman. He was also informed that the team had tried to direct Mr Miah to the Council's Corporate Complaints team to forward his complains about the insurers, but he declined the offer. Mr Miah's concerns relating to the Leasehold Management Charge 2012/13, the alleged problems with the insurance claim and being unable to reside in the property, were not items which would be charged under the Leasehold Management Charge.

The Service Charge Certificates / Statements showed the charges in each of the service charge years in issue for the item 'Administration Charges' and subsequently, 'Leasehold Management Charges'. The item challenged was the charge for 2012/13 of £200.76 (shown on the Service Charge Certificate – 2012/2013').

In closing submissions on behalf of the Council it was submitted that Mr Miah's complaints were general complaints. No alternative quotations had been produced.

Having considered the evidence and submissions the tribunal considers that the charge of £200.76 for Leasehold Management Charges for 2012/13 is reasonable and reasonably incurred. There is no direct evidence to support a connection between the handing of the insurance claim and Leasehold Management Charges, the make up of which has been satisfactorily explained by Mr Brown.

#### 28.4. Housing Management Charge

The Council also makes a charge for general management called in the service charge accounts 'Management', 'General Management' and in later years, 'Housing Management'. As described in the Council's statement of case, this charge covers the Pest Control Service, Resident Engagement, the Anti-Social Behaviour Service and Customer Access Service. The charge is made up of direct costs, service management costs and overheads. Apart from Customer Access where the Council acknowledged that the leaseholders make less use of the service than secure tenants, the Council considered that leaseholders and secure tenants benefited equally from these services.

Mr Miah submitted that the Anti-Social behaviour service is a 'council service' and not one which is reasonable to charge to long leaseholders. He further submitted that prior to the Almo being established, services like Anti-Social Behaviour orders (ASBOs), were funded from Council tax. 'Customer Access' appeared to be a repetition of the service alleged to be provided under Leasehold Management Charge. He questioned the extent to which Pest Control was a Council wide service and

whether there is a repetition of 'overheads' under Leasehold Management Charges.

Mr Brown noted that the Housing Management Charge for Mr Miah was £75.59 in 2012/13. That charge was made up of Pest Control Service, Anti-Social Behaviour service, Resident Engagement and Customer Access. The costs are benchmarked as part of 'Housing Management' by House Mark. Anti-Social behaviour is part of the proper Housing Management Charge which affects all residents and should apply to leaseholders.

Mr Miah submitted that the Council did not present itself as a non-profit making organisation.

Other than the comment in respect of 2003-2006 and 50% deduction for later years, no specific issue was taken under this heading in the tenant's section of the schedule referred to above.

#### 28.5. Communal Energy

Mr Brown explained that communal electricity is the cost of providing block and estate lighting, electricity to power lifts, cold water and heating pumps.

At the hearing Mr Miah was asked to identify the figure he considered he should be paying for this item. He stated that he would be prepared to share the cost of installing solar panels in his Block. Mr Brown mentioned that solar lighting would only apply to outdoor solar panels. Mr Miah considered that solar panels paid for itself with one or two years of installation, but provided no evidence to support this. Mr Brown said that communal energy included lighting of the blocks and the Estate, including public pathways. It is a requirement for leaseholders to contribute to these costs as part of the service charge.

#### 28.6. Other service charge items

Other headings referred to in the accounts were addressed in the Council's statement of case. The main items commented upon in Mr Miah's statement of case (27<sup>th</sup> April 2015) included the following: Block and Estate Repairs, Bin Hire, Bulk Waste, Communal Electricity, Horticulture/Grounds Maintenance, TV Aerial Repair

Mr Brown explained that Block and Estate Repairs are repairs following complaints by residents, and are responsive rather than planned repairs. Bulk Waste is the collection of bulky waste on the Estate. Communal electricity is the cost of providing block and Estate lighting, electricity to power lifts, cold water and heating pumps. In respect of Horticulture and Grounds Maintenance, the horticulture team is

responsible for the maintenance of communal shrub and plant beds, cutting of communal grassed area plus the weed spraying of these areas and communal hard standing areas. TV aerials are a block based service. They are provided to all residents of the block rather than individual tenants. The costs are apportioned to each property in a block based on the GRV of the property.

Mr Miah submitted in respect of Block and Estate Repairs that the services related to social / Council tenants. In respect of Bin Hire, Mr Miah questioned the methodology.

In respect of aerials, at the hearing Mr Miah contended that the outdoor aerial at the Block had not worked for over seven years. He provided no evidence in support.

Mr Miah was concerned with the parking permit problems experienced at the Block. However, he accepted that the parking was not run by the service charge department.

Other than the comment in respect of 2003-2006 and 50% deduction for later years, no specific issues were taken under these headings in the tenant's section of the schedule.

29. Complaints of repairs issues at the property between 2010 and 2012, and charges relating to Major Works

Mr Brown considered that Mr Miah's query did not relate to the reasonableness of the service charges, but appeared to be a complaint about the Council's administration of his repairs.

Mr Miah said that he had complained about a leak in his property in January 2012 which the Council failed to deal with in a timely manner. He mentioned that his property was next to the bin chute and that some 'kids' may have set fire to it at night. Mr Brown stated that this inquiry was looked in to and dealt with by the Council.

Mr Brown contended that Mr Miah's complaints about disrepair, such as a leak, had been addressed by the Council. When Mr Miah complained about the floor of his property, Mr Brown attended and relayed the problem to the repairs team. He submitted that the complaints about repairs had nothing to do with the Leasehold Management Charges. Mr Miah disagreed. He said that the management did not address his complaints in a timely manner. Mr Brown said that to the contrary, as soon as he was informed of the problem he notified the value added team and they dealt with the problem. The tenant would not have been recharged for this work. Mr Miah pursued his criticism stating that the repairs help line should

provide a service in which the process is that necessary repairs are completed within one or two weeks of being informed.

The details of the complaints regarding repair issues were set out in the various statements, statements of case and the Defence and Counterclaim provided by Mr Miah and amplified in his evidence at the hearing. It was noted that the Defence and Counterclaim did not include a Counterclaim for disrepair as such, but this element was referred to in the statement. The jurisdiction of the tribunal does not extend in effect to claims for damages for disrepair or personal injury. The jurisdiction under section 27A of the 1985 Act focuses on the reasonableness and payability of service charges by leaseholders. Accordingly, although the tribunal noted the dissatisfaction expressed by Mr Miah and his alleged claims in connection with repairs to his property, these are not matters within the tribunal's jurisdiction and no findings are made in respect to this.

However, the tribunal has considered Mr Miah's claims that the service /administration charges were unreasonable and unreasonably incurred. Mr Miah's challenged the standard of management and administration in respect of the repairs, in particular from 2010 – 2012. The details of the events claimed and concerns of Mr Miah are set out in detail in statements and pleadings provided by him, which are included in the hearing bundle.

On behalf of the Council it was submitted that the areas of concern were limited and that generally management provided in respect of the repairs was of a reasonable standard. The tribunal was referred to p.85 of the hearing bundle which showed that the figure for THH Management was £471.99 for 2011-12. The total charge to Mr Miah was £74.78. The Council's representative submitted that only part of this figure related to administration of the repairs. However, the tribunal having considered the evidence a whole decided that it was appropriate to reduce the charge by the total amount of £74.78 in all the circumstances. This is reflected in the figures listed below and Note 2 to that figure. It was also noted that Mr Miah was not satisfied that proper consultation had taken place in respect of the various major works undertaken. Documents in respect of the consultation and invoices relating to the various Major Works were not included in the hearing bundle. In the absence of this the tribunal considered that it is appropriate to limit the sums recoverable for major works from Mr Miah to £250 in each instance. This is also reflected in the figures reflected below and Note 1 to those figures.

30. Limitation issue

It was submitted on behalf of the Council that as the service charges were recoverable in default under the lease as rent in arrears, that 6 year limitation period applied as a matter of practice. However, Mr Miah

had acknowledged in his Admission (specified amount) in the County Court proceedings for £3254. Accordingly, in view of this acknowledgement of the debt (attributed to the earliest payments due), the limited provisions ceased to apply to that part of the debt and the remainder was within the 6 year period. Accordingly, it was submitted, and the tribunal agrees, that none of the claim is statute barred. Although Mr Miah suggested at the hearing that the majority of the amount of £3254 was in respect of his mortgage, however he clearly made an admission in the County Court proceedings in respect of the schedule setting out the sums owed to the Council and therefore acknowledged the debt.

31. **Sums found to be reasonable, reasonably incurred and payable by Mr Miah to the applicant**

Having considered the evidence as a whole, the tribunal finds that the following costs were reasonable and reasonably incurred and the sum of **£6990.85** is payable by Mr Miah to the applicant. Reference should be made to the schedule attached to the Particulars of Claim in the County Court Proceedings regarding sums claimed.

Invoice Date	Invoice Description	sum outstanding
21.4.2003	Estimated SC 2003/04	£242.32
29.3.2004	Estimated SC 2004/05	£286.05
7.11.2005	Actual SC 2004/05	£78.40
23.5.2005	Estimated SC 2005/06	£188.25
27.3.2006 and 23.1.2009	Major Works	£250 (see Note 1 below)
5.6.2006	Estimated SC 2006/07	£532.79
1.4.2007	Estimated SC 2007/08	£561.36
14.6.2007 and 17.10 2007	Major Works	£250 (see Note 1 below)
1.4.2008	Estimated SC 2008/09	£608.62
2.7.2008	Major Works estimate	£100
22.6.2009	Estimated SC 2009/10	£651.29
13.4.2010	Insurance charge 2010/11	£119.73

12.4.2010	Estimated SC 2010/11	£611.40
26.9.2011	Actual Service Charge 2010/11	£82.23
1.4.2011	Insurance charge 2011/21	£120.77
1.4.2011	Estimated SC 2011/12	£638.72 (see note 2)
6.9.2012	Actual SC 2011/12	£8.53
2.4.2012	Estimated SC 2012/12	£665.71
27.9.2013	Actual SC 2012/13	£79.12
2.4.2013	Insurance Charge 2013/14	£120.77
2.4.2013	Estimated SC 2013/14	£794.79
	<b>Total:</b>	<b>£6990.85</b>

**Note 1:** The applicant has not provided evidence of the required supporting consultation notices under section 20 of the Landlord and Tenant Act 1985 as amended or relevant invoices. Mr Miah was concerned that the Council had not fully complied with the appropriate requirements regarding, amongst other things, notices and consultation. Accordingly the tribunal limits the sum recoverable from Mr Miah to £250 in respect of each of the Major Works events.

**Note 2:** The figure of £713.50 claimed for this item is reduced by £74.78 (being the actual cost claimed for Block Repair and Maintenance) in the service charge certificate for 2011/2012 (page 25 of the hearing bundle). The evidence of Mr Brown was that of the figure of £74.78, the management element was £5.09. He submitted that it was this management element that Mr Miah complained about. However, having considered the evidence as a whole the tribunal considers that Mr Miah's area of complaint was not limited to the management element of this charge, and that the appropriate figure to allow was the full amount of £74.78 due to the general dissatisfaction with the Council's services in this category.

### 32. Section 20C Landlord and Tenant Act 1985

Although the Council indicated that no costs would be passed through the service charge, for the avoidance of doubt, the tribunal nonetheless determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the

applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

**Name:** Judge A Seifert

**Date:** 1<sup>st</sup> December 2015



## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

#### Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
  - (a) "costs" includes overheads, and
  - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

#### Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  - (a) only to the extent that they are reasonably incurred, and
  - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

#### Section 27A

- (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  - (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
  - (b) the person to whom it would be payable,
  - (c) the amount which would be payable,
  - (d) the date at or by which it would be payable, and
  - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

## **Section 20**

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
  - (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
  - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
  - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

### **Section 20B**

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

### **Section 20C**

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

- (2) The application shall be made—
  - (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
  - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
  - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
  - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
  - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

## **Commonhold and Leasehold Reform Act 2002**

### **Schedule 11, paragraph 1**

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
  - (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
  - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
  - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
  - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

- (3) In this Part of this Schedule “variable administration charge” means an administration charge payable by a tenant which is neither—
- (a) specified in his lease, nor
  - (b) calculated in accordance with a formula specified in his lease.
- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

**Schedule 11, paragraph 2**

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

**Schedule 11, paragraph 5**

- (1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
  - (b) the person to whom it is payable,
  - (c) the amount which is payable,
  - (d) the date at or by which it is payable, and
  - (e) the manner in which it is payable.
- (2) Sub-paragraph (1) applies whether or not any payment has been made.
- (3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.
- (4) No application under sub-paragraph (1) may be made in respect of a matter which—
- (a) has been agreed or admitted by the tenant,
  - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  - (c) has been the subject of determination by a court, or
  - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.
- (6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
- (a) in a particular manner, or

(b) on particular evidence,  
of any question which may be the subject matter of an application  
under sub-paragraph (1).